BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2019-2-E

IN RE: Annual Review of Base Rates for Fuel Costs for South Carolina Electric & Gas Company	))))))	**SOUTH CAROLINA SOLAR BUSINESS ALLIANCE, INC.'S RESPONSE TO COMPANY'S PETITION TO REHEAR OR RECONSIDER**

INTRODUCTION

COMES NOW the South Carolina Solar Business Alliance, Inc. ("SBA"), by and through counsel, and files this Response to the Petition to Rehear or Reconsider Order No. 2019-229 With Respect To Rate PR-2 And In The Alternative, Motion For Stay ("Petition for Reconsideration") filed by South Carolina Electric & Gas Company ("SCE&G" or the "Company") on April 1, 2019. Under the very limited circumstances presented in this matter, the SBA does not oppose the Commission's entry of an order temporarily staying the availability of the PR-2 rate schedule, if the Commission includes certain conditions necessary to ensure that the federal PURPA rights of solar Qualifying Facilities ("QFs") in South Carolina are not violated. The SBA also files this response to correct certain misstatements made in the Petition for Reconsideration.

The SBA did not Make any Misleading Statements or Factual Misrepresentations in its Reply Brief.

SCE&G notes in the Petition for Reconsideration that the SBA, in its March 22, 2019 Reply in support of its Motion to Bifurcate, stated that "At this time SBA is unaware of any QFs that have contracted under the current PR-2 rates, and SCE&G has likely not filed any PPAs under the current rates with the Commission." Petition for Rehearing at 2. SCE&G claims that this amounted to a "misrepresentation" because on March 11, 2019, SCE&G had received a request for "draft PPAs" for three solar projects under development by an SBA member company. SBA acknowledges that one of its member companies did in fact make that request. However, it is absolutely untrue that the existence of this request makes SBA's statements inaccurate or misleading an any way.

In a literal sense, of course, the statement made in SBA's brief that there were no QFs under contract with the current PR-2 rates was (and still is) completely accurate, to the best of SBA's knowledge. Prior to filing its brief, SBA counsel polled its members to determine

whether any of them had in fact contracted under current PR-2 rates. Those who responded confirmed that they had not done so, and the modest statement made in SBA's brief reflect the extent of that knowledge.

More importantly, SBA's statement was not misleading, either. This is because requesting a draft PPA from the utility does not indicate that a QF necessarily intends to contract with the utility at the currently-applicable rates. In fact, the SBA member who requested draft PPAs in the e-mail referenced in SCE&G's Motion did so, not because it wanted to contract under those PR-2 rates, but in order to gather information about SCE&G's current proposed PPA provisions relating to Variable Integration Charges and curtailment of solar facilities. SCE&G has a history of revising its standard form PPA periodically, generally with the effect of making it less seller-friendly and more difficult to finance. The SBA member who requested the draft PPAs had not seen a draft SCE&G PPA in some time and was interested in the company's current position on PPA language. That member has confirmed that it does not, at present, intend to pursue PPAs under the currently-approved PR-2 rates.[1] Therefore the statements made by SBA's counsel in its Reply brief are in no way false or misleading.

Under the Circumstances, SBA Does not Oppose a Limited and Conditional Suspension of PR-2 Rates.

The SBA does not agree that a suspension of the PR-2 rate is necessary to protect ratepayers. Nor does SBA agree with the general proposition that a utility's claim that a rate is "stale" is enough to justify suspension of a standard rate, especially without a factual finding that the file rate actually exceeds the utility's avoided cost. Nevertheless, the SBA will not oppose a suspension of the PR-2 rate under the unique circumstances presented here, where (1) the SBA has itself requested that the Commission delay updating PR-2 rates; (2) there is uncertainty about the applicable rates created by the pending appeal; and (3) negotiated rates continue to be available to QFs.

[1] SBA did not represent in its Reply brief, and does not now represent, that no SBA member or other QF will in the future seek to contract under PR-2 rates or any other particular rate. Just what avoided cost rates will make for a financeable project change over time, as the costs of developing a solar project change. Among other things, the cost of panels and other components may change rapidly, as can the costs of project financing.

However, if this Commission does decide to suspend the PR-2 tariff, it should impose certain conditions necessary to protect QFs' rights under PURPA. Under PURPA, a QF has a federally-enforceable right to sell its energy and capacity at rates equal to "the avoided costs calculated at the time the [legally enforceable] obligation is incurred." 18 C.F.R. § 292.304(d)(2). As the Commission is aware, the SBA and other parties to the 2018 SCE&G fuel case (docket no. 2018-2-E) have appealed the Commission's Order in that Docket approving the current PR-2 rate. This appeal could, either at the Supreme Court or on remand, ultimately result in the rejection of either the current PR-2 rates or some aspects of SCE&G's methodologies for calculating avoided cost rates. If a QF were forced by a rate suspension to contract at a negotiated rate based on a methodology later disapproved by this Commission, then it must have the right to revise its avoided cost rates to reflect that change in the law. In recognition of this, the Commission, if it suspends the PR-2 tariff, should also clarify that if the Supreme Court reverses this Commission's 2018 PR-2 decision, and the Commission on remand either disapproves elements of SCE&G's avoided cost calculations or approves PR-2 rates that differ than the current ones, then any QF that contracts under negotiated rates must be guaranteed the right to revise its negotiated avoided cost rates to reflect that development.

Respectfully Submitted,
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